

1
2 UNITED STATES DISTRICT COURT FOR THE
3 WESTERN DISTRICT OF WASHINGTON
4 AT SEATTLE

5 PACIFIC WOODTECH CORPORATION,)
6 A Washington Corporation,)

7 *Plaintiff*)

8 v.)

9 DANIEL SEMSAK,)

10 *Defendant.*)
11

CASE NO. 2:19-cv-01984-BJR

ORDER GRANTING IN PART AND
DENYING IN PART MOTION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE

12 **I. INTRODUCTION**

13 Before the Court is Plaintiff Pacific Woodtech Corporation's motion for temporary
14 restraining order and order to show cause. Dkt. No. 6. Having reviewed the motion, the
15 declarations included thereto, and the record of the case as it exists, the Court with grant in part
16 and deny in part Plaintiff's motion. The reasoning for the Court's decision follows.

17 **II. BACKGROUND**

18 Plaintiff is a Washington state corporation and represents itself as a "leading manufacturer
19 of engineered wood products, specifically LVL and I-Joists." Dkt. No. 1 at ¶ 1; *see also id.* at ¶ 6.
20 Defendant is a former executive who, until October of this year, worked for Plaintiff. *See id.* at ¶
21 7. His last position at the company was as Northeast and Northwest Business Development
22 Manager. *Id.*

23
24 In this position, Plaintiff represents that Defendant had access to a "wide variety of
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1 [Plaintiff's] most confidential, proprietary, and trade secret information.” *Id.* at ¶ 9. According to
2 Plaintiff, Defendant agreed to be bound by Plaintiff's confidentiality policies, including that he
3 would not “divulge or transmit any of [Plaintiff's] confidential or trade secrets.” *Id.* at ¶ 8 *see also*
4 Dkt. No. 6 at 5–6 (providing an excerpt from Plaintiff's employment handbook addressing
5 Confidential and Proprietary Information).

6 According to Plaintiff, on October 9, 2019, Defendant informed Plaintiff that he was
7 leaving their employ. Dkt. No. 1 at ¶ 10. Defendant informed Plaintiff that he would be taking a
8 position with Plaintiff's industry competitor, Murphy Company (“Murphy”). Dkt. No. 6 at 2, 6.
9 Before leaving, Plaintiff's CEO, James Enright, reminded Defendant of his obligations to return
10 all property belonging to Plaintiff and not to misappropriate company trade secrets. Dkt. No. 1 at
11 ¶ 11.

13 Shortly thereafter, members of Plaintiff's company attended an industry trade show and
14 while there were informed that Defendant was present at the show and was divulging Plaintiff's
15 “confidential [] pricing strategies involving current [] customers.” *Id.* at 12.

17 Plaintiff responded with a cease and desist letter instructing Defendant to cease divulgence
18 of company trade secrets and requesting that he return any company property. *Id.* at ¶ 13; *see also*
19 Dkt. No. 1-1 (cease and desist letter). In reply, Defendant sent a letter reaffirming his commitment
20 not to disclose or misuse Plaintiff's confidential and proprietary information and enclosing a thumb
21 drive which he represented contained “all the written information related to” his employment with
22 Plaintiff, “confidential or otherwise,” that he retained after leaving the company. Dkt. No. 1 at ¶
23 14; *see also* Dkt. No. 1-2 (Defendant's response letter).

25 Plaintiff then hired a third-party expert who conducted a forensic analysis of Plaintiff's

1 computer-related activities in his final weeks with the company. According to Plaintiff, the
2 analysis revealed that Defendant “downloaded sensitive [] Trade Secrets onto multiple flash drives
3 that [Defendant] took with him when he left” Plaintiff’s employ. Dkt. No. 1 at ¶ 15; *see also* Dkt.
4 No. 6 at 9 (providing tabular logs of downloaded materials). Plaintiff represents that there is “no
5 reason for any [of Plaintiff’s] employee[s] to download such data.” Dkt. No. 6 at 9.

6 Based on the foregoing, Plaintiff filed the current suit. Plaintiff’s complaint, filed on
7 December 4, 2015, asserts causes of action for (1) theft of trade secrets under the Defend Trade
8 Secrets Act, 18 U.S.C. § 1832 *et seq.*; (2) misappropriation of trade secrets under Washington
9 Revised Code (“RCW”) 19.108; (3) breach of duties of loyalty and confidentiality; and (4)
10 replevin. Dkt. No. 1 at ¶¶ 20–43. On December 5, 2015, Plaintiff moved for a temporary
11 restraining order which: (1) enjoins Defendant from disclosing or using Plaintiff’s confidential
12 information and trade secrets; (2) requires Defendant to turn over “all of [Plaintiff’s] confidential
13 information and trade secrets . . . as well as all of [Defendant]’s personal computers and
14 [Defendant]’s work computers” so that Plaintiff may image them to preserve evidence, identify to
15 whom else Defendant may have passed trade secrets, and to prevent further disclosure; (3) requires
16 Defendant to preserve all evidence; (4) requires Murphy to preserve all evidence; and (5) requires
17 Defendant to show cause as to why a preliminary injunction preventing him from possessing,
18 disclosing, or using Plaintiff’s confidential and trade secrets is not warranted. Dkt. No. 6 at 3–4.

21 III. LEGAL STANDARD

22 Federal Rule of Civil Procedure (“FRCP”) 65(b) empowers federal district courts to issue
23 temporary restraining orders (“TRO”). FED. R. CIV. P. 65(b); *see also* Local Rules W.D. Wash.
24 LCR 65(b).
25

1 To obtain a TRO, the movant must “meet the standards for issuing a preliminary
2 injunction.” *Navigant Consulting, Inc. v. Milliman, Inc.*, No. 18-1154, 2018 WL 3751983, at *3
3 (W.D. Wash. Aug. 8, 2018). This includes the requirement that the movant show that (1) it is
4 likely to succeed on the merits of its claims, (2) it is likely to suffer irreparable harm in the absence
5 of preliminary relief, (3) the balance of equities tips in its favor, and (4) an injunction is in the
6 public interest. *Id.* (citing *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008)).

7
8 Local Western District of Washington Court Rule 65 states that “[m]otions for temporary
9 restraining orders without notice to and an opportunity to be heard by the adverse party are
10 disfavored and will rarely be granted.” Local Rules W.D. Wash. LCR 65(b)(1). Plaintiff’s motion
11 indicates that it has notified Plaintiff of this lawsuit and the pending motion. Dkt. No. 6 at 4.
12 Further, the Court will order the parties to appear on Wednesday, December 11, 2019 at 9 a.m. via
13 teleconference to discuss the terms of this order. The Court encourages Defendant, if he requires
14 additional time, to seek leave from the Court in modifying the time and date of the conference,
15 including for the purpose of retaining counsel.

16 17 **IV. DISCUSSION**

18 **A. Likelihood of Success on the Merits**

19 Plaintiff is likely to succeed on the merits of at least some of its claims. For example,
20 Plaintiff advances a claim for misappropriation of trade secrets under RCW 19.108, which permits
21 an injunction of “[a]ctual or threatened misappropriation” WASH. REV. CODE § 19.108.020(1); *see*
22 *also Earthbound Corp. v. MiTek USA, Inc.*, No. 16-1150 RSM, 2016 WL 4418013, at *9 (W.D.
23 Wash. Aug. 19, 2016). The statute defines both “trade secrets” and “misappropriation.” *See*
24 WASH. REV. CODE § 19.108.010(2), (4).
25

1 In its motion, Plaintiff asserts that Defendant has misappropriated proprietary information
2 likely to constitute trade secrets under Washington law including “intellectual property related to
3 [Plaintiff]’s new and developmental products; customer and sales information (including key
4 contacts, order history and preferences, and other confidential customer information); pricing
5 information and strategies; financial information and analyses; market competitive analyses;
6 business, sales, and marketing strategies; and operations information.” Dkt. No. 6 at 6. *See*
7 *Earthbound*, 2016 WL 4418013, at *9–*10 (holding that “detailed information about [Plaintiff]’s
8 current and prospective customers, pending projects, bids, pricing, product design, and other
9 elements of its business constitute trade secrets”). The Court finds that Plaintiff has demonstrated
10 a likelihood of success on the merits.
11

12 **B. Irreparable Harm**

13 Plaintiffs asserts irreparable harm in the form of “losing clients, profit margin, [and]
14 revenue.” Dkt. No. 6 at 15. Such losses easily constitute irreparable harm. *See Navigant*, 2018
15 WL 3751983, at *4 (quoting *Stuhlberg Int’l Sales Co. v. John D. Brush & Co.*, 240 F.3d 832, 841
16 (9th Cir. 2001) (“The potential to lose customers, employees, goodwill, and revenue ‘certainly
17 support[s] a finding of the possibility of irreparable harm.’”). The Court finds that Plaintiff has
18 demonstrated the likelihood of irreparable harm if the TRO is not granted.
19

20 **C. Balance of the Equities**

21 The balance of the equities also points in Plaintiff’s favor. The relief that the Court will
22 grant in the form of the temporary restraining order against further dissemination of trade secrets
23 and preservation of evidence merely preserves the status quo. *See Navigant*, 2018 WL 3751983,
24 at *4 (“[t]here is minimal prejudice to Defendants because the TRO simply preserves the status
25

1 quo”). As such, there is minimal harm to Defendant or Murphy, as Defendant may continue his
2 employment with Murphy. *See id.* (finding minimal harm where order “does not prevent [former
3 employee] from continuing to work for [new employer]”). The Court finds that the balance tips in
4 Plaintiff’s favor.

5 **D. Public Interest**

6 Finally, misappropriation of trade secrets is “harmful not only to the individual or entity
7 whose secrets are purloined, but also to the public.” *Earthbound*, 2016 WL 4418013, at *10.
8 Therefore, it is in the public interest to grant the TRO.
9

10 **E. Bond**

11 Federal courts may only grant TROs if “the movant gives security in an amount that the
12 court considers proper to pay the costs and damages sustained by any party found to have been
13 wrongfully enjoined or restrained.” FED. R. CIV. P. 65(c). This requirement, however, may be
14 waived where the Court concludes “there is no realistic likelihood of harm to the defendant from
15 enjoining his or her conduct.” *Navigant*, 2018 WL 3751983, at *4 (citing *Jorgensen v. Cassidy*,
16 320 F.3d 906, 919 (9th Cir. 2003)). As the Court will merely order Defendant not to further
17 disclose trade secrets, the Court finds that there is minimal damage to be sustained from its order.
18 As such, the Court will not require a security bond.
19

20 **V. CONCLUSION**

21 The Court will grant Plaintiff relief in the form of enjoining future dissemination of its
22 trade secrets. Also, the Court will grant Plaintiff’s requests to have Defendant and Murphy
23 preserve the evidence in whatever form currently available. Further relief the Court will not grant
24 at this time. Therefore, the Court GRANTS in part and DENIES in part Plaintiff’s motion for
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temporary restraining order and order to show cause, Dkt. No. 6, and orders as follows:

1. Defendant is enjoined from disclosing or using Plaintiff's confidential information and trade secrets;
2. Plaintiff's request for an order requiring Defendant to turn over his personal and work computers is DENIED;
3. Defendant is required to preserve all evidence in whatever form currently available related to Defendant's confidential information;
4. Murphy Company is required to preserve all evidence in whatever form currently available related to Defendant's confidential information;
5. The parties are to appear for a hearing to discuss the terms of this order via teleconference on Wednesday, December 11, 2019 at 9 a.m., and;
6. Plaintiff shall serve a copy of this order on Defendant and Murphy Company.

DATED this 6th day of December, 2019.



BARBARA J. ROTHSTEIN
UNITED STATES DISTRICT JUDGE